

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TIME SQUARE CONSTRUCTION, INC.,

Plaintiff,
-against-

07Civ 7403 (RJS)

BUILDING AND CONSTRUCTION TRADES COUNCIL
OF GREATER NEW YORK, ENTERPRISES ASSOCIATION
OF STEAMFITTERS LOCAL 638 OF THE UNITED
ASSOCIATION, CEMENT AND CONCRETE WORKERS
LOCAL 20 OF THE LABORERS INTERNATIONAL UNION
OF NORTH AMERICA, UNITED BROTHERHOOD OF
CARPENTERS & JOINERS OF AMERICA LOCAL 608,
LOCAL #46 METALLIC LATHERS UNION AND
REINFORCING IRONWORKERS OF NEW YORK AND
VICINITY OF THE INTERNATIONAL ASSOCIATION OF
BRIDGE, STRUCTURAL, ORNAMENTAL AND
REINFORCING IRON WORKERS, INTERNATIONAL
UNION OF OPERATING ENGINEERS, LOCAL 15D,
AFFILIATED WITH THE AFL-CIO, LABORERS
LOCAL 79, A CONSTITUENT LOCAL UNION OF THE
MASON TENDERS DISTRICT COUNCIL OF GREATER
OF NEW YORK, AFFILIATED WITH LABORERS
INTERNATIONAL UNION OF NORTH AMERICA,
MASON TENDERS DISTRICT COUNCIL OF GREATER
NEW YORK, DISTRICT COUNCIL OF NEW YORK CITY
AND VICINITY OF THE UNITED BROTHERHOOD OF
CARPENTERS, JOINERS OF AMERICA, AFL-CIO AND
LOCAL UNION 3, INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS AND TEAMSTERS LOCAL 282
A/W INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO, PLUMBERS AND GASFITTERS
LOCAL UNION NO. 1, and CEMENT AND CONCRETE
WORKERS LOCAL 18A OF THE LABORERS
INTERNATIONAL UNION OF NORTH AMERICA,

**ANSWER TO
AMENDED COMPLAINT**

Defendants.

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Defendants DISTRICT COUNCIL OF NEW YORK CITY AND VICINITY OF THE
UNITED BROTHERHOOD OF CARPENTERS, JOINERS OF AMERICA ("District Council")

and UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL 608, as and for their answer to the amended complaint allege as follows:

1. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph "1" of the amended complaint, except deny the allegations as to the District Council and Local 608.
2. Deny the allegations contained in paragraph "2" of the amended complaint, and refer questions of law to the Court for resolution.
3. Deny the allegations contained in paragraph "3" of the amended complaint, and refer questions of law to the Court for resolution.
4. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "4" of the amended complaint.
5. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "5" of the amended complaint.
6. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "6" of the amended complaint.
7. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "7" of the amended complaint.
8. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "8" of the amended complaint.
9. Admit the allegations contained in paragraph "9" of the amended complaint.
10. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "10" of the amended complaint.

11. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "11" of the amended complaint.

12. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "12" of the amended complaint.

13. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "13" of the amended complaint.

14. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "14" of the amended complaint.

15. Admit the allegations contained in paragraph "15" of the amended complaint.

16. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "16" of the amended complaint.

17. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "17" of the amended complaint.

18. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "18" of the amended complaint.

19. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "19" of the amended complaint.

20. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "20" of the amended complaint.

21. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "21" of the amended complaint.

22. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "22" of the amended complaint.

23. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "23" of the amended complaint.

24. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "24" of the amended complaint.

25. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "25" of the amended complaint.

26. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "26" of the amended complaint.

27. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "27" of the amended complaint.

28. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "28" of the amended complaint.

29. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "29" of the amended complaint.

30. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "30" of the amended complaint.

31. Deny knowledge and information sufficient to form a belief with respect to the allegations contained in the first sentence of paragraph "31" of the amended complaint. Deny the allegations contained in the second sentence of paragraph "31" of the amended complaint as to Local 608.

32. Deny knowledge and information sufficient to form a belief with respect to the allegations contained in paragraph "32" of the amended complaint.

33. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "33" of the amended complaint.

34. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "34" of the amended complaint.

35. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "35" of the amended complaint.

36. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "36" of the amended complaint.

37. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "37" of the amended complaint.

38. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "38" of the amended complaint.

39. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "39" of the amended complaint.

40. Deny knowledge and information sufficient to form a belief with respect to allegations contained in paragraph "40" of the amended complaint, except deny the allegations contained in the second sentence of paragraph "40" of the amended complaint with respect to Local 608.

41. Deny the allegations contained in paragraph "41" of the amended complaint.

42. Deny the allegations contained in paragraph "42" of the amended complaint.

43. Deny the allegations contained in paragraph "43" of the amended complaint.

44. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "44" of the amended complaint.

45. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "45" of the amended complaint.

46. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "46" of the amended complaint.

47. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "47" of the amended complaint.

48. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "48" of the amended complaint.

49. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "49" of the amended complaint.

50. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "50" of the amended complaint.

51. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph "51" of the amended complaint, except deny the allegations of paragraph "51" with respect to Local 608.

52. Deny allegations contained in paragraph "52" of the amended complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

53. The amended complaint fails to state a claim against District Council and Local 608.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

54. The dispute hereunder is subject to the grievance and arbitration provisions of the collective bargaining between the District Council and Navillus Tile, Inc. to which plaintiff is bound in that it is a joint or single employer with Navillus or its alter ego.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

55. The Court lacks subject matter jurisdiction with respect to this claim because, inter alia, the underlying dispute is subject to grievance and arbitration provisions of the collective bargaining agreement, and/or the primary jurisdiction of the National Labor Relations Board.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

56. Plaintiff has failed to exhaust contractual and administrative remedies.

WHEREFORE, defendants demand judgment:

- (a) Dismissing the amended complaint in its entirety;
- (b) Attorneys fees, costs and disbursements incurred in the defense of this action; and
- (c) Such other and different relief as the Court deems proper and just.

Dated: New York, New York
February 4, 2008

Yours, etc.,

O'DWYER & BERNSTIEN, LLP

By


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